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WM. R. STANSBURY  
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IN THE

**Supreme Court of the United States**

OCTOBER TERM, A. D., 1922.

No. **39**

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DIRECTOR GENERAL OF RAILROADS,  
Petitioner.

against

SAMUEL KASTENBAUM,  
Respondent.

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On Writ of Certiorari to the Supreme Court  
of the State of New York

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**BRIEF FOR RESPONDENT**

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ISRAEL G. HOLENDER,  
*Attorney for Respondent*  
Buffalo, N. Y.



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DIRECTOR GENERAL OF  
RAILROADS,

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**No. 374**

**On Writ of Certiorari to the Supreme Court  
of the State of New York**

**BRIEF FOR RESPONDENT**

**POINT I**

**A false arrest action is clearly within the purview of the provisions of Section 10 of the Federal Act.**

General Order 50, issued by the Director General of Railroads, October 28, 1918, provided, in part, as follows:

“It is therefore ordered that actions at law, suits in equity, and proceedings in admiralty hereafter brought in any court based on contract, binding upon the Director General of Railroads, claim for death or *injury to person*, or for loss and damage to property, arising since December 31, 1917, and

growing out of the possession, use, control or operation of any railroad or system of transportation by the Director General of Railroads, which action, suit or proceeding but for Federal Control might have been brought against the carrier company, shall be brought against William G. McAdoo, Director General of Railroads, and not otherwise; provided, however, *that this order shall not apply to actions, suits or proceeding for the recovery of fines, penalties, and forfeitures.*"

The provisions of the foregoing order specifically allow an action to be brought against the Director General for "injury to person."

The Code of Civil Procedure of the State of New York (Section 3343, s-d. 9) provides as follows:

" 'A personal injury' includes \* \* \* an assault, battery, *false imprisonment* \* \* \* "

In *Missouri Pacific R. R. Co., vs. Ault*, 256 U. S. 554, the court says, in part:

"The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure of its agents or servants from their duty under such law; but it did not undertake to punish itself for any departure by the imposition upon itself of fines and penalties, or to permit any other sovereignty to punish it. \* \* \*

*"The purpose for which the government permitted itself to be sued was for compensation, not punishment. In issuing General Order No. 50, the Director General was careful to confine the order to the limits set by the act, by concluding the first paragraph of the order: 'Provided, however, that this order shall not apply to actions, suits, or proceedings for the recovery of fines, penalties, and forfeitures.' Wherever the law permitted compensatory damages, they may be collected against the carrier, while under Federal Control."*

*Fiero on Torts*, under the head of "Compensatory Damages," states:

*"Indemnity may be given for injury to reputation, feelings, health, mind, and person, caused by the arrest, together with the expenses of the defense."*

*The verdict in this case was rendered to compensate respondent for the loss of time, legal expenses, etc., occasioned by his unwarranted arrest.*

## POINT II

**Section 10 of the Federal Control Act provides that No Defense shall be made upon the ground that the carrier is an instrumentality or agency of the Federal Government. It was not intended by this legislation either to extinguish or impair vested rights of action or to authorize the President or his agents so to do.**

Respondent was arrested January 23, 1918.

The false arrest action was instituted on August 17, 1918.

The "Lehigh Valley Railroad Company" was named as defendant.

An answer was interposed on behalf of the company, which alleged, in part, as follows:

"That heretofore the said Director General of Railroads issued a general order known as Order No. 50, which was dated October 28, 1918, and which provided, among other things, that actions at law arising since December 31, 1917, and growing out of the possession, use, control or operation of any railroad or system of transportation by the Director General of Railroads should be brought against William G. McAdoo, Director General of Railroads, and not otherwise; and further providing that pleadings in all actions of law pending at the time said order was issued against any carrier company for a cause of action arising since December 31, 1917, based on a cause of action arising from or out of the operation of any railroad or other carrier, may on application be amended by substituting the said Director General of Railroads for the carrier company as party defendant, and dismissing the company therefrom, to all the provisions of which said order No. 50 reference hereby is made as though set forth in full.

"That thereafter said order No. 50 was amended by general order No. 50-A, which

said order contained the same provisions as order 50 hereinabove referred to, but directed that hereafter actions of the character hereinabove referred to should be brought against "Director General of Railroads" and not otherwise, reference to said order No. 50-A being hereby made as though herein set in full."

Respondent, thereafter, served an amended complaint, substituting the "Director General of Railroads," as defendant, in place and stead of the "Lehigh Valley Railroad Company."

An answer to the amended complaint was then interposed, on behalf of the Director General, which is in the form of a general denial with the exception of certain admitted facts.

Act of March 21, 1918 (Federal Control Act) Chapter 25, Sec. 10, reads, in part, as follows:

"Carriers while under Federal Control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; *and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government.*"

In *Moore & Co. v. A. T. & S. F. R. Co.*, 106 Misc 59, the head note, reads in part, as follows:

"The provision of section 10 of said act of Congress, which declares that 'Carriers while under Federal control shall be subject to all laws and liabilities as common carriers \* \* \* except in so far as may be inconsistent with the provisions of this Act or any other Act applicable to such Federal control or with any order of the President', must be construed to be wholly prospective in its operation and to affect only liabilities arising after said act took effect; it was not intended by this legislation either to extinguish or impair vested rights of action or to authorize the President or his agent or agents so to do."

### POINT III

**The order and judgment of the Supreme Court of the State of New York should be affirmed with costs.**

Respectfully submitted,

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 738 Prudential Bldg.,  
 Buffalo, N. Y.

Service of a copy the within memorandum is acknowledged this      day of April, 1922.

*Attorney for Petitioner.*